

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

DANIEL CUMMINGS, JR.

PETITIONER

V.

NO. 4:15-CV-00150-DMB-DAS

**SUPT. BANKS and ATTORNEY
GENERAL OF THE STATE OF
MISSISSIPPI**

RESPONDENTS

**ORDER TRANSFERRING CASE TO
FIFTH CIRCUIT COURT OF APPEALS**

This matter is before the Court, *sua sponte*, for consideration of the transfer of this cause. Daniel Cummings, Jr., Mississippi prisoner # 33877, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the 1982 burglary conviction and sentence as an habitual criminal that he received in the Circuit Court of Leflore County, Mississippi.

Cummings has filed at least one other unsuccessful § 2254 motion concerning the same sentence which he now seeks to challenge. *See Cummings v. MDOC*, No. 4:01cv246-GHD. The Antiterrorism and Effective Death Penalty Act requires that an applicant seeking to file a second or successive petition first “move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Cummings has not obtained such an order. Rather than dismissing the petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) & (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997). Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED** that:

1. This petition shall be transferred to the Fifth Circuit Court of Appeals for Cummings to seek permission to file this successive § 2254 petition;

2. The Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) & (b)(3)(C), and *In re Epps*, 127 F.3d at 365; and

3. This case is **CLOSED**.

SO ORDERED, this 12th day of January, 2016.

/s/ Debra M. Brown
UNITED STATES DISTRICT JUDGE